

1 Recording requested by  
2 and return original to:

3 SHERIDAN RANDOLPH  
4 3564 Gresham Court  
5 Pleasanton, California 94566

6 When recorded, mail certified copy to:

7 Department of Health Services  
8 Toxic Substances Control Division  
9 Property Evaluation Unit  
10 714/744 "P" Street, P.O. Box 942732  
11 Sacramento, CA 94232-7320

INSTRUMENT NO. 89 074937  
RECORDED BY

Ticor Title Insurance Company  
RECORDED August 17, 1989

OFFICIAL RECORDS OF  
SAN JOAQUIN COUNTY

FEES: 31.00  
I HEREBY CERTIFY THIS TO BE A FULL, TRUE  
AND CORRECT COPY OF THE ORIGINAL.

BY Ticor Title Insurance Company  
S. Clayton

COVENANT AND AGREEMENT

TO RESTRICT USE OF PROPERTY

(AREA A OF ACME-STOCKTON GALVANIZING WORKS)

15 This Covenant and Agreement ("Covenant") is made as of the  
16 7th day of July, 1989,

17 by Sheridan Randolph ("Covenantor"), who is the owner of  
18 record of certain real property situated in the City of  
19 Stockton, County of San Joaquin, State of California,  
20 described in Exhibit "A" attached hereto and incorporated  
21 herein by this reference ("the Property") and by the  
22 California Department of Health Services, with reference to  
23 the following facts:

24 A. The Property known as Area A as described in Exhibit "A"  
25 is attached to other real property known as Acme-Stockton.

26  
27  
OFFICIAL FILE COPY -1-  
TOXIC SUBSTANCES CONTROL DIVISION  
CENTRAL FILE UNIT

AUG 23 1989

California Department  
of Health Services

UNIT

Galvanizing Works and contains, or at one time contained, certain materials in concentration levels considered "hazardous" under California law.

B. Covenantor desires and intends that in order to protect the present or future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous materials which have been deposited on unspecified portion of the Property.

C. The Covenantor furthers desires and intends that the terms of the Covenant are for the mutual benefit of the Property and shall constitute an easement held by the People of the State of California in the Property which shall run with the land, shall inure to the benefit of the Property, and shall apply to and bind the respective successors in interest thereof.

## ARTICLE I

### DEFINITIONS

1.01 Department. "Department" shall mean the California State Department of Health Services and shall include its successor agencies, if any.

1.02 Improvements. "Improvements" shall mean all buildings,

1 structures, roads, driveways, regradings, and paved parking  
2 areas, constructed or placed upon any portion of the Property.

3  
4 1.03 Occupants. "Occupants" shall mean Owners and those  
5 persons entitled by ownership, leasehold, or other legal  
6 relationship to the exclusive right to occupy any portion of  
7 the Property.

8  
9 1.04 Owner. "Owner" shall mean the Covenantor or her  
10 successor in interest, including heirs, and assigns, who  
11 hold title to all or any portion of the Property.

12 1.05 "Excavation" shall mean the excavation of soils below  
13 the asphalt cap that covers the Property.

14  
15 1.06 "Hazardous Materials" shall have the meaning set forth  
16 in California Code of Regulations, Title 22, Section 66084.

17  
18 ARTICLE II  
19 GENERAL PROVISIONS

20 2.01 Statement Regarding Hazard. This Covenant is not, and  
21 shall not be construed as, a statement or declaration that any  
22 existing or potential health, environmental, or other hazard  
23 exists or will exist on the Property.

24  
25 2.02 Provisions To Run With The Land. This Covenant sets  
26 forth protective provisions, covenants, restrictions, and  
27

1 conditions, (collectively referred to as "Restrictions"), upon  
2 and subject to which the Property shall be improved, held,  
3 used, occupied, leased, sold, hypothecated, encumbered, and/or  
4 conveyed. Each and all of the Restrictions shall run with the  
5 land, and shall apply to and bind the respective successors in  
6 interest thereof. Each and all of the Restrictions are imposed  
7 upon the entire Property as mutual equitable servitudes in  
8 favor of the Property and every portion thereof. Each and all  
9 of the Restrictions are imposed and run with the land pursuant  
10 to Section 25202.5 of the California Health and Safety Code.  
11

12 1.03 Concurrence Of Owners Presumed. All purchasers,  
13 leasees, or possessors of the Property shall be deemed by  
14 their purchase, leasing, or possession of such Property, to  
15 be in accord with the foregoing and to agree for and among  
16 themselves, their heirs, successors and assignees, and the  
17 agency, employees, and leasees of such owners, heirs,  
18 successors, and assignees, that the Restrictions as herein  
19 established must be adhered to for the benefit of future  
20 Owners and Occupants and that their interest in the Property  
21 will be subject to the Restrictions contained herein.

22 1.04 Incorporation Into Deeds And Leases. The Restrictions  
23 set out herein shall be incorporated by reference in each and  
24 all future deeds and leases of the Property, pursuant to  
25 Section 1468, 1469 and 1470 of the California Civil Code.  
26  
27

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions On Use. Covenantor agrees to the restrictions on the use of the Property known as Area A as described in Exhibit "A" as follows:

- (A) The Property shall not be used for residences, hospitals, schools for persons under age 21, day-care centers or any permanently occupied human habitation, including hotels or motels which are used as a permanent residence by employees, without the prior written approval of the Department.
- (B) No excavation and removal off-site of any soils from underneath the overlying asphalt cap on the Property shall be allowed without the prior written approval of the Department. All excavated soils must be tested for any hazardous materials and then any such hazardous materials shall be properly disposed as required by law to a Class I Hazardous Waste Landfill or in any other manner permitted by law.
- (C) The Covenantor, owner, occupant or lessee of the Property shall continually keep and maintain an asphalt and/or cement cap on top of the soil over the entire area of the Property.

1 (D) No use of the Property shall be allowed to disturb the  
2 integrity of the final asphalt and/or cement cap over  
3 the soil, unless it can be adequately demonstrated to  
4 the Department that the disturbance is necessary to the  
5 proposed use of the Property and will not increase any  
6 potential hazard to the public health and safety or the  
7 environment, or is necessary to reduce an imminent threat  
8 to the public health and safety or the environment.  
9

10 3.02 Conveyance Of Property. Owner shall provide a sixty  
11 (60) day advance notice to the Department of any sale, lease,  
12 or other conveyance of the Property or an interest in the  
13 property to a third person (L.F.W. Manufacturing Company,  
14 Stockton, California, not included). The Department shall  
15 not, by reason of the Covenant, have the right or authority to  
16 approve, disapprove, or otherwise affect any sale, lease, or  
17 other conveyance of the Property except as otherwise provided  
18 by law.

19 3.03 Enforcement. Failure of the Owner or Occupants to  
20 comply with any of the requirements, as set forth in Section  
21 3.01, shall be grounds for the Department, by reason of this  
22 Covenant, to have the authority to require that the Owner or  
23 Occupants modify or remove any Improvements constructed in  
24 violation of that paragraph. Failure to maintain any  
25 long-term mitigation Restrictions as set forth in Section  
26  
27

1 3.01(C) shall be grounds for the Department to enforce this  
2 Covenant and impose civil and criminal actions against the  
3 Owner or Occupants pursuant to Section 25236 of the California  
4 Health and Safety Code. The Department shall not, by reason  
5 of this Covenant, have the right or authority to approve,  
6 disapprove or otherwise affect any use of the Property not  
7 described in Section 3.01, except as otherwise provided by  
8 law. The Department agrees that if the Owner or Occupants  
9 comply with the Restrictions as set forth in this covenant,  
10 the Department shall not require, directly or indirectly, the  
11 Owner or Occupants to take any action whatsoever, remedial or  
12 otherwise, with respect to the hazardous materials contained  
13 on the Property as of the date of execution of this Covenant.  
14

15 3.04 Notice In Agreements. All future purchase, lease,  
16 sublease or rental agreements entered by the Owner or  
17 Occupants relating to the Property shall be in writing and  
18 shall contain or be accompanied by a written instrument which  
19 contains the following statement:

20 "The land described herein contains hazardous waste.  
21 Such condition renders the land and the owner, leasee,  
22 or other possessor of the land subject to requirements,  
23 restrictions, provisions, and liabilities contained  
24 in Section 25100 et.seq., Chapter 6.5, Division 20 of  
25 the California Health and Safety Code. This statement  
26  
27

1 is not a declaration that a health hazard exists."  
2

3  
4 ARTICLE IV

5 VARIANCE AND TERMINATION

6 4.01 Variance. Any Owner or, with the Owner's consent, any  
7 Occupant of the Property may apply to the Department for a  
8 written variance from the provisions of this Covenant. Such  
9 application shall be made in accordance with Section 25233 of  
10 the California Health and Safety Code.

11 4.02 Termination. Any Owner or, with the Owner's consent,  
12 an Occupant of the Property may apply to the Department for a  
13 termination of the Restrictions as they apply to the Property.  
14 Such application shall be made in accordance with Section  
15 25234 of the California Health and Safety Code.

16  
17 4.03 Term. Unless terminated in accordance with paragraph  
18 4.02 above, by law or otherwise, this covenant shall continue  
19 in effect in perpetuity.

20  
21 ARTICLE V

22 MISCELLANEOUS

23 5.01 No Dedication Intended. Nothing set forth herein shall  
24 be construed to be a gift or dedication, or offer of a gift or  
25 dedication, of the Property to the general public or for any  
26  
27



1 purposes whatsoever.  
2

3 5.02 Notices. Whenever any person shall desire to give  
4 or serve any notice, demand, or other communication with  
5 respect to this Covenant, each such notice, demand, or other  
6 communication shall be in writing and shall be deemed  
7 effective (1) when delivered, if personally delivered to  
8 the person being served or to an officer of a corporate  
9 party being served, or (2) three (3) business days after  
10 deposit in the mail if mailed by United States mail, postage  
11 paid certified, return receipt requested:

12 To: Ms. Sheridan Randolph  
13 3564 Gresham Court  
14 Pleasanton, CA 94566  
15

16 Copy to: Department of Health Services  
17 Toxic Substances Control Division  
18 Property Evaluation Unit  
19 714/744 "P" Street, P.O. Box 942732  
20 Sacramento, California 94234-7320

21 Department of Health Services  
22 Toxic Substances Control Division  
23 Region 1, Site Mitigation Unit  
24 4250 Power Inn Road  
25 Sacramento, California 95826  
26  
27

1 5.03 Partial Invalidity. If any portion of the Restrictions  
2 set forth herein or terms are determined to be invalid for any  
3 reason, the remaining portion shall remain in full force and  
4 effect as if such portion had not been included herein.  
5

6 5.04 Article Headings. Headings at the beginning of each  
7 numbered article of this Covenant are solely for the  
8 convenience of the parties and are not a part of the Covenant.  
9

10 5.05 Recordation. This instrument shall be executed by the  
11 Covenantor, and by the Director, California Department of  
12 Health Services. This instrument shall be recorded by the  
13 Covenantor in the County of San Joaquin within ten (10) days  
14 of the date of execution.

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27

1 5.06 References. All references to Code section include  
2 successor provisions.  
3

4 IN WITNESS WHEREOF, the parties execute this Covenant as of  
5 the date set forth below.  
6

7 Acme Manufacturing Co. Inc.

8  
9 By: Sheldon C. Rauloff

10  
11 Title: Pres

12  
13 Date: 7-7-89

14  
15 DEPARTMENT OF HEALTH SERVICES

16  
17 By: Ed J. Dible

18  
19 Title: Section Chief

20  
21 Date: 8-7-89

22  
23 Acknowledgements  
24  
25  
26  
27

1  
2 STATE OF CALIFORNIA )  
3 )  
4 )  
5 )  
6 )

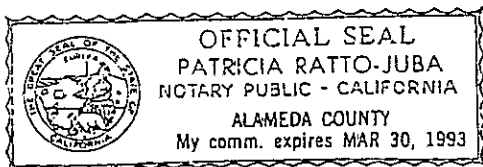
7  
8 COUNTY OF ALAMEDA )  
9 )  
10 )  
11 )  
12 )

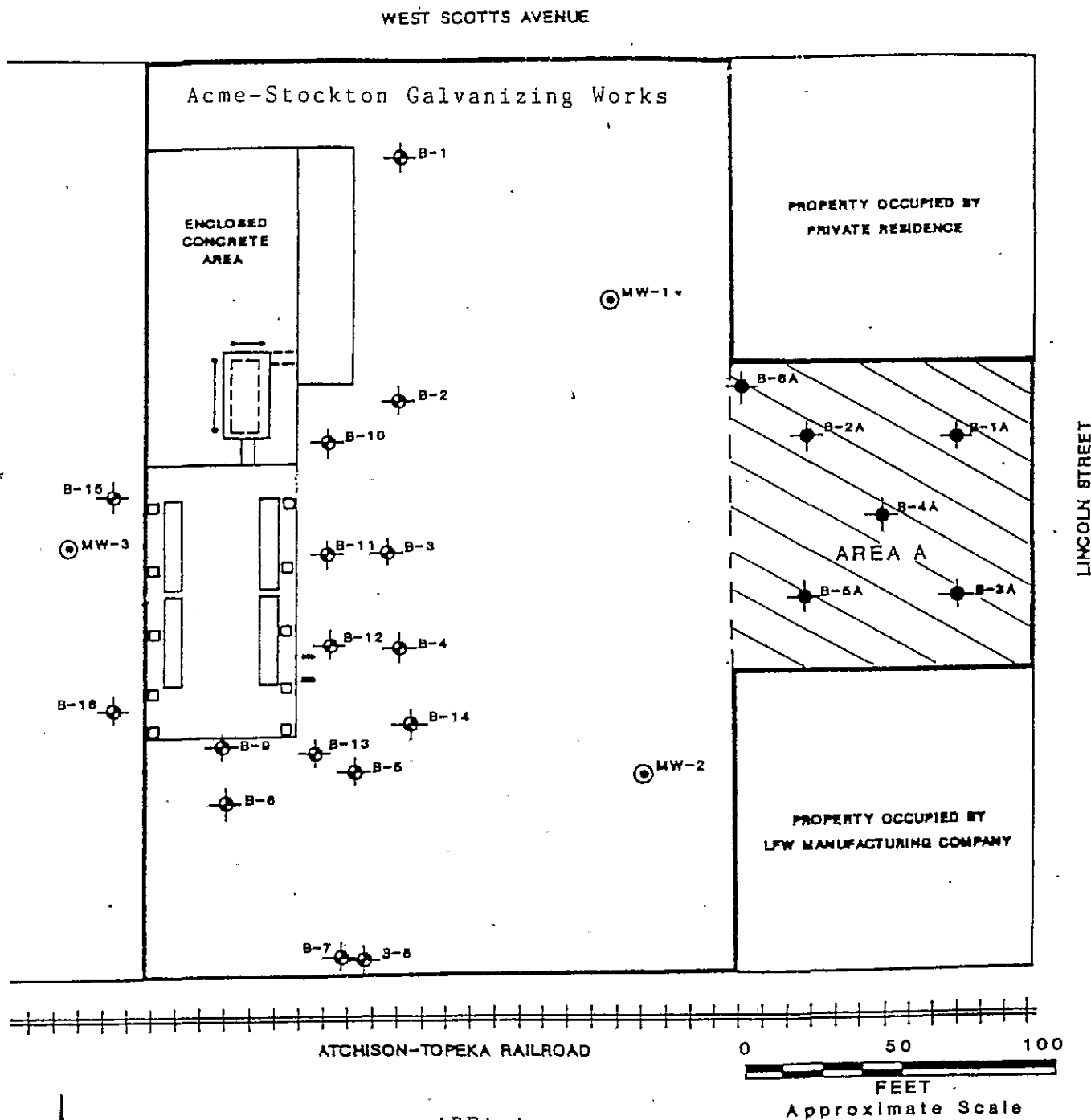
13 On July 7, 1989, before me, the  
14 undersigned, a Notary Public in and for said state, personally  
15 appeared SHERIDAN RANDOLF, personally  
16 known to me or proved to me on the basis of satisfactory  
17 evidence to be the person who executed the within instrument  
18 as PRESIDENT/OWNER of Acme Galvanizing Inc.  
19 the corporation that executed the within instrument, and  
20 acknowledged to me that such corporation executed the same  
21 pursuant to its bylaws or a resolution of its board of  
22 directors.  
23

24 WITNESS my hand and official seal.  
25  
26  
27

Patricia Ratto-Juba

Notary Public in and for said County and  
State





AREA A

Description of the Property

THE EASTERLY TWO-THIRDS OF LOTS 15 & 16, ALL IN BLOCK 15 SOUTH OF MORMON CHANNEL IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP THEREOF.

**SITE PLAN SHOWING SOIL BORING LOCATIONS**

JOB NO.:  
13-7209-001-00-03

DATE:  
MARCH 1989

FIGURE:  
2